

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 350 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? NO.

2. To be referred to the Reporter or not? NO. @

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3. Whether Their Lordships wish to see the fair copy
of the judgement? NO.

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? NO.

5. Whether it is to be circulated to the Civil Judge?
NO.

STATE OF GUJARAT

Versus

ASHOKBHAI RANCHHODBHAI DABHI

Appearance:

MR S.R.Divetia, APP for appellant
Respondents served.

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI
Date of decision: 06/05/99

ORAL JUDGEMENT(Per Kadri,J.)

The State of Gujarat has challenged the order of acquittal of the respondents, recorded by the learned Addl. Sessions Judge, Vadodara, in Sessions Case No.127/90, for the offences punishable under Section 302 read with Section 34 and 114 of the Indian Penal Code, by filing this appeal under Section 378 of the Code of Criminal Procedure,1908.

2. The prosecution case in nutshell is summarized as under :

The complainant Kalidas Jivabhai is the elder brother of Natubhai Jivabhai (hereinafter referred to as "the deceased") and both were residing separately along with their family members in the locality known as Rangavdhatpura, Vadodara. In the locality of Rangavdhatpura there is one temple of Bhathuji. Three to four days prior to the date of incident i.e. March 8,1990, stones were pelted at the said temple by some miscreants, and therefore, the deceased, Chhaganbhai Chhotabhai and Naranbhai had gone in the direction from which stones were pelted. As per the prosecution case, stones were pelted from the direction of Petrofills Society. It is alleged that all the three respondents were pelting stones towards the temple from the terrace of Petrofills Society. The deceased accompanied by other persons caught hold of three respondents and brought them from the terrace of the house situated at Petrofills Society. All the three respondents were brought near Bhathuji's temple where complainant Kalidas was also present. The deceased gave slap to respondent No.2, as a result, there was altercation between the deceased and respondent No.1. The respondent No.1 got enraged and told the deceased that why did you slapped Ishwarbhai ? By speaking these words, respondent No.1 gave knife blow on the chest of the deceased. The complainant caught hold of respondent No.1 and asked one Dhuljibhai Gababhai to take charge of respondent No.1. Deceased due to infliction of knife blow on the left portion of his chest fell down. Naynaben who is the wife of the deceased and who was present at the place of incident caught hold of the deceased in her hands. Meantime, respondent No.1 escaped and ran away towards the house of the respondent

No.2. The deceased due to knife blow inflicted by the respondent No.1 was profusely bleeding and was taken in a auto-rickshaw to S.S.G.Hospital, Vadodara. The complainant Kalidas, wife of the deceased Naynaben as well as brother of Naynaben namely Shivdas had accompanied the deceased to the hospital. The Police Head Constable Udesing who was present at S.S.G. Hospital had send a Vardhi to J.P.Road Police Station at about 10-00 p.m., which was received by the police station on 10-25 p.m. During treatment at S.S.G. Hospital, Vadodara, the deceased succumbed to the injuries at about 10-25 p.m. and another Vardhi was sent to J.P.Road Police Station by Police Head Constable Udesing. Mr. K.R.Parmar, P.S.I. of J.P.Road Police Station on receiving the Vardhi went to S.S.G. Hospital and recorded the complaint of Kalidas Jivabhai. On the basis of the complaint, offence under Sections 302 and 114 read with Section 34 of the Indian Penal Code was registered at C.R. No.I-59/90. P.S.I. Mr Parmar recorded the statements of the witnesses and drew panchnama of the place of incident. Inquest of the dead body of the deceased Natubhai Jivabhai was held and it was sent for post mortem. Dr. Tandon performed the post-mortem on March 9, 1990, between 11-30 a.m. to 12-30 p.m. The blood stained clothes of wife of deceased Naynaben were recovered under the panchnama. The respondents came to be arrested on March 9, 1999 and bloodstained bushshirt put on by the respondent No.1 was seized under a Panchnama. The bloodstained clothes put on by the deceased were also seized under a panchnama. The respondent No.1 while in custody shown his willingness to show the muddamal knife by which he had inflicted blow on the chest of the deceased. Therefore, by discovery panchnama drawn under Section 27 of the Indian Evidence Act, the muddamal knife was recovered. The bloodstained clothes and the muddamal knife were sent to F.S.L. for analysis. On receipt of the report from F.S.L. and after completing the investigation, P.S.I. Parmar filed charge sheet against the respondents for the offence punishable under Sections 302, 34 and 114 of the Indian Penal Code in the court of learned Chief Judicial Magistrate, Vadodara. As the offence under Section 302 of the Indian Penal Code is exclusively triable by the court of Sessions, the case came to be committed to the Sessions Court, Vadodara, which was numbered as Sessions Case No.127/90.

3. The charge Exh.1 was framed by the learned Addl. Sessions Judge, Vadodara, against the respondents for the offence under Section 302 read with Section 34 and 114 of the Indian Penal Code. The charge was read over and

explained to the respondents and they pleaded not guilty and claimed to be tried. The prosecution to substantiate its case against the respondents examined ; (1) Kalidas Jivabhai, PW 1 at Exh.10, (2) Chhaganbhai Chhotabhai, PW Naranbhai Gemalsinh, PW 3 at Exh.12, (4) Dhuljibhai Gababhai, PW 4 at Exh.13, (5) Naynaben Gababhai, PW 5 at Exh.14, (6) Dahiben Shanabhai, PW 6 at Exh.24, (7) Dr. Rakesh N. Tandon, PW 7 at Exh.27, (8) Rameshbhai Babubhai, PW 8 at Exh.28, (9) Kalidas Babubhai, PW 9 at Exh.30 and (10) Kiritbhai Ramabhai (Investigating Officer), PW 10 at Exh.32.

The prosecution to prove the case against the respondents also produced documentary evidence such as Vardhis received from S.S.G. Hospital at Exh.15 and 16, inquest panchnama Exh.17, panchnama of the clothes of the deceased Exh.18, arrest panchnama of the respondents Exh.19, panchnama of seizure of blood stained clothes of Naynaben, Exh.20, post-mortem note Exh.21, panchnama of the place of incident Exh.29, report of the F.S.L. Exh.23, etc. After the recording of evidence of prosecution was over, the learned Addl. Sessions Judge questioned the respondents generally as regard evidence led against them and their statements came to be recorded under Section 313 of Criminal Procedure Code. The respondents in their statements stated that they have not committed any offence and they are falsely involved in the case. However, the respondents did not lead any evidence in their defence.

4. On appreciation of evidence led by the prosecution and after hearing arguments of learned advocates of both the sides, the learned Addl. Sessions Judge observed that the evidence of witness Chhaganbhai Chhotabhai Exh.11 does not prove that the respondent No.1 inflicted knife blow on the deceased. The learned Addl. Sessions Judge also observed that the evidence of prosecution witness Naranbhai Gemalbai Exh.12 does not support the version of the incident as narrated by the complainant and the witness Naranbhai Gemalsinh has not deposed that the respondent No.1 had inflicted knife blow on the chest of the deceased. The learned Addl. Sessions Judge further observed that the evidence of Dhuljibhai Gababhai Exh.13 does not indicate that he had seen the accused giving knife blow on the deceased. The learned Addl. Sessions Judge noticed that there were contradictions in the evidence of prosecution witnesses about the version prior to the infliction of the knife blow on the deceased by the respondent No.1, and therefore, the evidence of the prosecution witnesses was not reliable. The learned Addl. Sessions Judge observed

that due to commotion, many people had gathered at the place of the incident, but the prosecution did not examine independent witnesses who might have witnessed the infliction of knife blow by the respondent No.1 on the deceased. It was observed by the learned Addl. Sessions Judge that the evidence of the complainant and Naynaben who was the wife of the deceased was contradictory and was not at all trustworthy and reliable. It was concluded by the learned Addl. Sessions Judge that the evidence of Naynaben does not inspire confidence because there were many contradictions and omissions in her evidence as to whether she was present at the place of the incident when the respondent gave knife blow on the deceased. On the basis of above-referred to conclusions, the learned Addl. Sessions Judge by the impugned judgment and order acquitted the respondents of the offences punishable under Sections 302, 34 and 114 of the Indian Penal Code, which has given rise to filing of this appeal.

5. Learned Public Prosecutor Mr. S.R.Divetia has taken us through the entire evidence produced on record of the case and has submitted that the learned Addl. Sessions Judge was not justified in not relying upon the evidence of the complainant and Naynaben nor holding the respondents guilty of the offences for which they were acquitted. It is claimed by the learned counsel for the appellant that respondents were pelting stones from Petrofils Society and they were caught red handed by the deceased and other persons and were apprehended and brought to Bhathuji's temple. It is further claimed by the learned counsel for the appellant that when the respondents were brought near Bhathuji's temple an altercation had taken place wherein the respondent No.1 had given a knife blow on the left side of the chest of the deceased. It is claimed that respondent No.1 given knife blow with an intention to cause murder of the deceased, and therefore, the learned Addl. Sessions Judge ought to have held the respondent No.1 guilty of the offence punishable under Section 302 of the Indian Penal Code. Learned counsel for the appellant stressed that there was sufficient evidence against the respondent no.1 which establishes that he was involved in the serious crime of committing murder of deceased Natubhai Jivabhai. It is stressed that the bushshirt which was put on by the respondent No.1 which was seized under the panchnama was stained with blood and on analysis the blood which was found on the bushshirt of the respondent No.1 tallied with the blood group of the deceased. Lastly it is submitted by the learned counsel for the appellant that the contradictions and omissions which

were noticed by the learned Addl. Sessions Judge were minor in nature and they could have been ignored by the learned Addl. Sessions Judge. Lastly it is submitted by the learned counsel for the appellant that there was sufficient material which had come on the record to hold that respondent No.1 had committed the murder of deceased Natubhai Jivabhai and the respondent Nos. 2 and 3 shared the common intention and had abetted in commission of the crime, and therefore, the order of the acquittal should be set aside and the appeal be allowed.

6. The incident of the assault on the deceased had taken place on March 8, 1990 at about 9-45 p.m. After the incident, the deceased was taken to S.S.G.Hospital and Vardhi Exh.15 was sent by Police Constable Udesing to J.P.Road Police Station. The said Vardhi was received at the police station around 10-25 p.m. Thereafter, during the treatment the deceased succumbed to the injuries and another Vardhi Exh.16 was sent from the hospital by Police Head Constable Udesing to J.P.Road Police Station around 12-00 midnight. In our opinion, two Vardhis would be F.I.R. in this case, and therefore, the learned Addl. Sessions Judge had rightly not accepted the complaint lodged by Kalidas Jivabhai as first information report. After receipt of the Vardhi, the P.S.I. Mr. Parmar has started investigation, and therefore, the complaint which was recorded by P.S.I. would be merely a statement recorded under Section 161 of the Cr.P.C. Therefore, the finding of the learned Addl. Sessions Judge in not accepting the complaint as F.I.R. is just and proper.

7. Learned counsel for the appellant has taken us through the entire evidence of witnesses examined by the prosecution. We have minutely scanned through the evidence of the prosecution witnesses. So far as evidence of PW 2 Chhaganbhai Chhotabhai and PW 3 Naranbhai Gemalsinh is concerned, it does not help the prosecution that the respondent No.1 had inflicted knife blow on the deceased. With regard to the incident which took place prior to the infliction of knife blow, when there are many contradictions in the evidence of Chhaganbhai Chhotabhai and Naranbhai Gemalsinh, in our view, the learned Addl. Sessions Judge has rightly not relied upon their evidence. So far as the evidence of PW 4 Dhuljibhai Gababhai is concerned, the said witness has deposed that after the respondents were apprehended from Petrofills Society and brought near Bhathuji's temple, a scuffle had taken place between the deceased Natubhai Jivabhai and the respondents. The other witnesses namely the complainant and Naranbhai has not deposed about this

scuffle having taken place between the deceased and the respondents. The evidence of these witnesses also does not prove that they had witnessed the incident with regard to knife blow given by the respondent No.1 on the chest of the deceased. From the evidence of these witnesses it becomes clear that they had only heard shouts from crowd that knife blow was inflicted on Natubhai Jivabhai.

8. The evidence of Naynaben Natubhai, who is the wife of the deceased, indicates that when the respondent No.1 gave knife blow on the chest of the deceased, she was standing nearby the deceased, and therefore, the deceased collapsed in the lap of Naynaben, and therefore, her clothes were bloodstained. In the evidence of Naynaben many contradictions and omissions have been brought on the record which indicate that she was not in the near vicinity of the deceased when the knife blow was inflicted on his chest. The evidence of complainant Kalidas Jivabhai is contradictory to the evidence of Naynaben, and therefore, also presence of Naynaben at the place of the incident and her version that she had witnessed respondent No.1 giving knife blow to the deceased is doubtful. The clothes of Naynaben might have been stained with blood because the deceased had rush towards his house after the inflicting of the injury.

9. It is the consistent version of the prosecution witnesses that the deceased was given only one knife blow on the left side of his chest. If this version is compared with the medical evidence i.e. the oral testimony of Dr. Rakesh N. Tandan, Exh.27 and P.M. report Exh.21, it becomes evident that during the post-mortem examination, two stabbed injuries were found on the left side of the chest of the deceased. The inconsistency between the oral and medical evidence also raises serious doubts that the respondent No.1 had given knife blow to the deceased. When the direct evidence of the prosecution does not establish the guilt of the respondent No.1 having given knife blow to the deceased, the other corroborating evidence that the bushshirt put on by the respondent No.1 was having bloodstained and the blood which was found on the bloodstained bushshirt of respondent No.1 was having same blood of the deceased is of no consequences and on the basis of this corroborating piece of evidence, respondent No.1 cannot be held guilty of having committed murder of the deceased. The reasonings of the learned Addl. Sessions Judge that the prosecution evidence was contrary to the statements given before the police is just and quite proper. We do not find any illegality committed by the learned Addl.

Sessions Judge in acquitting the respondents. It must be stated that there is no iota of evidence against the respondent Nos. 2 and 3, and therefore, their acquittal recorded by the learned Addl. Sessions Judge is quite just and proper. In our view, no interference is called for by this Court and therefore, the order of acquittal deserves to be upheld and the appeal requires to be dismissed.

10. This is an acquittal appeal in which the Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence and the learned Judge who had an advantage of observing demeanour of witnesses. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondents. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Judge in order to convincing us to take the view contrary to the one already taken by the learned Judge. Therefore, the acquittal appeal deserves to be rejected.

11. For the foregoing reasons, the appeal is dismissed. Muddamal be disposed of in terms of the directions given in the impugned judgment.

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